Supreme Court, U. S.
FILED
FEB 15 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1142

CHRISTIAN BEACON PRESS, INC.,

Petitioner,

vs.

CITY OF CAPE MAY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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N.J.S.A. 54:4-3.6 2

CODE CITED:

28 U.S.C. §2101(c) 1

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ARGUMENT

Point I

The Petition should be denied because it was not filed within ninety days after entry of the Judgment of the New Jersey Supreme Court.

This is a Petition for Certification to review a Final Judgment of a State Court in a civil action which must be filed within ninety days after entry of Judgment. 28 U.S.C. §2101(c). Judgment was entered by the Supreme Court of New Jersey on October 4, 1979. (Petitioner's Appendix p. 36) The ninety day time period expired on January 2, 1980. This Petition was not filed until January 15, 1980.

Point II

This Petition should be denied because Petitioner has not complied with, and cannot comply with, the requirements of *Rule* 23(f) of the Rules of this Court.

Rule 23(f) requires that the Petition in this matter:

> "specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exception, portion of the court's charge and exception thereto, assignment of errors) as will show

that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari."

The Petition and Appendix in this matter are totally devoid of the required references.

It is respectfully submitted that this omission is not a matter of oversight which can be cured. The Petitioner did not advance the argument that denial of a real property tax exemption under the facts of this case constituted a violation of the Fourteenth Amendment right to equal protection until the filing of this Petition.

This action arose out of the refusal of the Tax Assessor of the City of Cape May to grant an exemption from real property taxation on a 333 room, multi-story, ocean front hotel with olympic swimming pool, rooftop restaurant and other amenities.

Exemption was sought pursuant to *N.J.S.A.* 54:4-3.6 which provides for exemption of property "actually and exclusively" used for religious purposes. Petitioner contended that its use of the premises was consistent with the requirements of actual and exclusively religious use.

It is well established New Jersey law that:

> "statutes granting exemption from taxation . . . are most strongly construed against those claiming exemption . . . the burden of proving a tax exempt status is upon the claimant." *Princeton Univ. Press v. Princeton*, 35 N.J. 209, 214 (1961)

The Court below citing that authority, reviewed the record and concluded:

> "No such showing has been made. On the contrary, the record before us discloses that in substantial part the Christian Admiral Hotel was, during the tax year in question, being used as a vacation or recreational facility by church members and the general public. Here, as in *Harvey Cedars v. Sisters of Charity of Saint Elizabeth*, 163 N.J. Super. 564 (App. Div. 1978), recently decided by this Court:
>
> > 'providing vacation facilities can simply not be reviewed as reasonably necessary for the work of the (respondent) organization. The status or vocation of the owners or occupiers of property cannot determine property tax exemption.'"

The authority cited by the Court below demonstrates that the treatment of the taxpayer in this case was not discriminatory but consistent with the interpretation of the New Jersey Tax Exemption Statutes uniformly applied to other religious organizations.

CONCLUSION

For all of the foregoing reasons, it is submitted that a writ of certiorari should be denied.

Respectfully submitted,

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City of Cape May